



FEDERAL ELECTION COMMISSION

WASHINGTON, D C 20463

VIA FIRST CLASS MAIL

Rebecca H. Gordon, Esq.
Perkins Coie LLP
607 14th Street, NW
Washington, DC 20005-2011

MAR 02 2005

RE: MUR 5305
Dario Herrera
Herrera for Congress and
Michael W. Kern, in his official
capacity as treasurer

Dear Ms. Gordon:

On October 3, 2002, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, information developed during the Commission's investigation, and information available to the public, the Commission, on February 15, 2005, found that there is reason to believe Dario Herrera knowingly and willfully violated 2 U.S.C. §§ 441f, 441b(a) and 441a(f), and that Herrera for Congress and Michael W. Kern, in his official capacity as treasurer, knowingly and willfully violated 2 U.S.C. §§ 441f, 441b(a), 441a(f) and 434(b), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that your clients have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you have any questions, please contact Jesse Christensen, the attorney assigned to this matter, at (202) 694-1650.

Sincerely, ---



Michael E. Toner
Vice-Chairman

Enclosures
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Dario Herrera MUR 5305
Herrera for Congress and
Michael W. Kern, in his official
capacity as treasurer

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by Donald F. McGahn II, General Counsel of the National Republican Congressional Committee.

*See 2 U.S.C. § 437g(a)(1).*¹

II. BACKGROUND

Information generated during a Commission investigation reveals that contributions to Herrera for Congress ("the Herrera Committee") by employees and spouses of employees at Rhodes Design and Development Corporation ("RDDC"), Bravo, Inc. d/b/a Rhodes Framing ("Bravo"), and Rhodes Ranch General Partnership ("Rhodes Ranch"), were made as part of a reimbursement scheme.

During the period between April 24, 2001 and March 29, 2002, employees and spouses of employees at these entities contributed a total of \$27,000 to the Herrera Committee. These contributions are shown in the table below:

¹ All of the facts recounted in this agreement occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Federal Election Campaign Act of 1971, as amended (the "Act"), herein are to the Act as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA. All statements of the law in this agreement that are written in the present tense shall be construed to be in either the present or the past tense, as necessary, depending on whether the statement would be modified by the impact of BCRA or the regulations thereunder.

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**RHODES CONTRIBUTORS'
CONTRIBUTIONS TO THE HERRERA COMMITTEE**

Date of Contribution	Name of Contributor	Employer/Occupation	Amount	Election Designation
4/24/01	James M Rhodes	Rhodes Design	\$1,000	Primary
4/24/01	Donna Escoto	Rhodes Construction/ Director of Purchasing	\$1,000	Primary
4/24/01	Nancy D Kurtik	Rhodes Construction/ Director of Sales	\$1,000	Primary
4/24/01	Lori J Marko	Rhodes Construction/ Escrow Manager	\$1,000	Primary
4/24/01	Kathryn J Sanucci	Rhodes Construction/ Product Supervisor	\$1,000	Primary
6/30/01	Lori J Marko	Rhodes Construction/ Escrow Manager	\$1,000	General
6/30/01	Kathryn J Sanucci	Rhodes Construction/ Product Supervisor	\$1,000	General
6/30/01	James A Bevan	Rhodes Design/CFO	\$1,000	General
6/30/01	James A Bevan	Rhodes Design/ CFO	\$1,000	Primary
6/30/01	Nadine Giudicessi	Rhodes Design/ Controller	\$1,000	General
6/30/01	Nadine Giudicessi	Rhodes Design/ Controller	\$1,000	Primary
6/30/01	Dean L Griffith	Rhodes Design/ General Manager	\$1,000	General
6/30/01	Dean L Griffith	Rhodes Design/ General Manager	\$1,000	Primary
6/30/01	Dirk P Griffith	Rhodes Design/ General Supervisor	\$1,000	General
6/30/01	Dirk P Griffith	Rhodes Design/ General Supervisor	\$1,000	Primary
6/30/01	Margaret Hester	Rhodes Design/ HR Manager	\$1,000	Primary
6/30/01	Andrea J Zoanni	Rhodes Design/ Payroll Clerk	\$1,000	Primary
6/30/01	Andrea J Zoanni	Rhodes Design/ Payroll Clerk	\$1,000	General
6/30/01	Mona M Wilcox	Rhodes Framung/ Controller	\$1,000	General
6/30/01	Mona M Wilcox	Rhodes Framung/ Controller	\$1,000	Primary
12/17/01	James M Rhodes	Rhodes Design	\$1,000	General
3/29/02	Gary Giudicessi	Imperial Palace/ Hotel Security	\$1,000	Primary
3/29/02	Gary Giudicessi	Imperial Palace/ Hotel Security	\$1,000	General
3/29/02	Margaret Hester	Rhodes Design/ HR Manager	\$1,000	General
3/29/02	Kevin Hester	Ry/Sys Management/ Painter	\$1,000	Primary
3/29/02	Ronald E Gillette	Rhodes Homes/ Corporate Counsel	\$1,000	General
3/29/02	Ronald E Gillette	Rhodes Homes/ Corporate Counsel	\$1,000	Primary
		TOTAL	\$27,000	

As the chart reflects, despite their wide range of positions, the contributors all made the maximum contribution allowed by the Act.

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III. FACTUAL AND LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits Federal candidates from knowingly accepting contributions made in the name of another. 2 U.S.C. § 441f. The Act also prohibits Federal candidates and their committees from knowingly accepting corporate contributions, 2 U.S.C. § 441b(a), or contributions in excess of the Act's limits. 2 U.S.C. § 441a(f). Under the Act, authorized candidate committees must file reports with the Commission setting out their receipts and disbursements. 2 U.S.C. § 434(a)(1). These reports must identify each person contributing more than \$200 in a calendar year. 2 U.S.C. § 434(b)(3).

The Act addresses violations of law that are knowing and willful. *See* 2 U.S.C. § 437g(a)(5)(B). Actions that are "knowing and willful" are those that were "taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H3778 (daily ed. May 3, 1976); *accord FEC v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985 (D.N.J. 1986) (knowing and willful standard requires knowledge that one is violating the law). An inference of a knowing and willful act may be drawn "from the defendant's elaborate scheme for disguising" his or her actions. *United States v. Hopkins*, 916 F.2d 207, 214-15 (5th Cir. 1990).

Based on the Commission's investigation to date, it appears that Dario Herrera received contributions from employees and spouses of employees at RDDC, Bravo, and Rhodes Ranch he knew to have been reimbursed. After receiving a call from Rhodes or one of his employees, Herrera appeared in person at RDDC's offices to collect the reimbursed contributions. After arriving, he spoke with RDDC Controller Nadine Giudicessi for an hour, and waited as she

26044132148

collected checks from employees who had not yet turned them in. The conduit contributors submitted occupation information and, thus, Herrera knew that the conduit contributors were not only upper-level management staff, but were also lower-level staff and their spouses. Moreover, in his capacity as a Clark County Commissioner, Herrera frequently came into contact with Rhodes and his various businesses. In 2001 and 2002, when the contributions in question were made, Rhodes had 22 items before the county commission. With his familiarity with Rhodes, his employees, and his businesses, it is unlikely that Herrera would believe that Rhodes employees and spouses – including a payroll clerk, human resources manager, painter, and casino security worker – had the wherewithal to contribute \$1,000 and sometimes \$2,000 to his congressional campaign committee. Indeed, a number of the employee contributors did not have sufficient funds to cover their contribution checks and required immediate reimbursement.

Mr. Herrera has declined to speak with the Commission. Thus, based on the Commission's investigation to date, and the lack of any contradictory information, there is reason to believe Dario Herrera and Herrera for Congress and Michael W. Kern, in his official capacity as treasurer, knowingly and willfully violated 2 U.S.C. § 441f by knowingly accepting contributions made in the name of another. Additionally, there is reason to believe Dario Herrera and Herrera for Congress and Michael W. Kern, in his official capacity as treasurer, knowingly and willfully violated 2 U.S.C. § 441a(f) by accepting contributions in excess of the Act's limits, and 2 U.S.C. § 441b(a) by accepting contributions from corporate sources. Lastly, there is reason to believe Herrera for Congress and Michael W. Kern, in his official capacity as treasurer, knowingly and willfully violated 2 U.S.C. § 434(b) by improperly reporting the reimbursed contributions as contributions from the conduit contributors.

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